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[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]
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[REDACTED]

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28 JUN 90

CIA [REDACTED]

[REDACTED]

TO: DIRNSA, DEPT OF STATE//FOR INR, DIA WASHINGTON DC,
TREASURY DEPT, WHITE HOUSE SITUATION ROOM.

[REDACTED]

TEXT

PASS: NSA FOR ZKZK OO DLS DE (FOR NSOC).

CENTRAL INTELLIGENCE AGENCY

WARNING: INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE.

[REDACTED]

DIST: 28 JUNE 1990

COUNTRY: CHILE

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Approved for Release
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SUBJ: PSCH EFFORTS TO PROMOTE A POLICY OF SELECTIVE HUMAN RIGHTS PROSECUTIONS REGARDLESS OF 1978 AMNESTY LAW; GOVERNMENT RESEARCH INTO INTERNATIONAL PROVISIONS THAT MAY AFFECT AMNESTY LAW

DOI: [REDACTED] JUNE 1990

TEXT: 1. [REDACTED]

2. [REDACTED] THE PSCH ADVOCATES A GOVERNMENT POLICY WHICH WOULD BRING THE MOST PROMINENT HUMAN RIGHTS ABUSE CASES TO THE COURTS WITHOUT CONSIDERATION FOR AMNESTY PROVISIONS. SUCH MAJOR CASES WOULD INCLUDE, FOR EXAMPLE, INDICTMENTS AGAINST FORMER DIRECTOR OF THE NOW-DEFUNCT NATIONAL INTELLIGENCE DIRECTORATE (DINA) MANUEL ((CONTRERAS)) SEPULVEDA AND RETIRED ARMY GENERAL ARELLANO ((STARK)), WHO LED THE SO-CALLED "CARAVAN OF DEATH" IN THE NORTH OF CHILE IN 1973. THESE CASES WOULD BE CONSIDERED SYMBOLIC AND MEANT TO ATONE FOR ALL THE HUMAN RIGHTS EXCESSES COMMITTED DURING THE MILITARY REGIME OF FORMER PRESIDENT GENERAL AUGUSTO ((PINOCHET)) UGARTE. ACCORDING TO THE PSCH SCENARIO, PINOCHET WOULD BE OBLIGED TO RESIGN FROM HIS POSITION OF ARMY COMMANDER IN CHIEF, BUT HE WOULD NOT BE REQUIRED TO STAND TRIAL.

3. [REDACTED] PSCH LEADERS NEVERTHELESS BELIEVE THAT THE PREVAILING SENTIMENT OF THE PEOPLE WOULD ALLOW PURSUIT OF THE PROMINENT HUMAN RIGHTS CASES WITHOUT REGARD TO THE 1978 AMNESTY LAW. THE PSCH CONTENTS, MOREOVER, THAT THE INTERNATIONAL CONVENTION OF CIVIL AND POLITICAL RIGHTS, SIGNED BY THEN-PRESIDENT PINOCHET IN 1976, SPECIFICALLY WARRANTS AGAINST AMNESTY FOR "CRIMES AGAINST HUMANITY." THE PSCH VIEWS THIS ACCORD AS ONE POSSIBLE BASIS FOR LEGAL ACTION REGARDLESS OF THE 1978 AMNESTY. THE PSCH HAS ENGAGED HUMAN RIGHTS LAWYERS TO LOOK INTO THIS AND RELATED MATTERS. THE PSCH WILL PUSH FOR AN "INTERPRETATIVE LAW" THAT WOULD SUBSTANTIATE THE PSCH'S CONTENTION FOR A LEGAL BASIS UNDER WHICH TO DISREGARD THE AMNESTY LAW.

4. [REDACTED]

5. [REDACTED] DEFENSE MINISTRY AND FOREIGN MINISTRY LEGAL STAFFS ARE CURRENTLY RESEARCHING INTERNATIONAL AGREEMENTS TO DETERMINE IF ANY SUCH AGREEMENT MAY HAVE JURIDICAL IMPACT ON THE 1978 CHILEAN AMNESTY LAW. NOTHING HAS YET BEEN DISCOVERED WHICH WOULD APPEAR TO AFFECT THE 1978 LAW. IT IS THE STATED POLICY OF THE CHILEAN GOVERNMENT THAT THE 1978 AMNESTY LAW NOT BE OVERTURNED, BUT THAT THE LAW DOES NOT PRECLUDE INVESTIGATIONS AND TRIALS. [REDACTED] COMMENT: THE PURPOSE OF THE GOVERNMENT'S EFFORT TO

DETERMINE IF THERE MAY BE AN APPLICABLE INTERNATIONAL AGREEMENT APPEARS TO BE TO COUNTER ANY EFFORT TO OVERRULE THE AMNESTY LAW, IN ORDER TO AVOID FURTHER COMPLICATIONS IN ITS RELATIONS WITH THE MILITARY.)

6. [REDACTED]

7. [REDACTED] FORMER DINA CHIEF CONTRERAS IS CONCERNED ABOUT THE POSSIBILITY OF A LEGAL INTERPRETATION WHICH COULD NULLIFY THE 1978 AMNESTY LAW IN CERTAIN OF ITS APPLICATIONS AFFECTING HUMAN RIGHTS VIOLATIONS IN CHILE. CONTRERAS HAS LEARNED THAT LAWYERS AFFILIATED WITH THE SOLIDARITY VICARIATE OF THE CATHOLIC CHURCH ARE STUDYING INTERNATIONAL LEGAL AGREEMENTS ON CAPITAL CRIMES. SUCH AN INTERNATIONAL AGREEMENT, IF APPLICABLE TO CRIMES COMMITTED IN CHILE DURING THE PERIOD COVERED BY THE AMNESTY LAW, WOULD POSSIBLY TAKE PRECEDENCE OVER NATIONAL LAW, AND THEREFORE NULLIFY THE LEGAL PROTECTION CURRENTLY AFFORDED UNDER THE 1978 CHILEAN AMNESTY LAW.

[REDACTED] COMMENT: IF THE CHILEAN MILITARY, PRIMARY BENEFICIARIES OF THE AMNESTY LAW, BELIEVE THERE IS A POSSIBILITY THE AMNESTY LAW COULD BE NULLIFIED OR FOUND TO BE INAPPLICABLE, SUCH A PERCEPTION WOULD FURTHER SENSITIZE AND EXACERBATE THE CURRENT SITUATION OF FEAR AND MISTRUST EXISTING BETWEEN THE MILITARY AND CIVILIAN ELEMENTS WHO ARE PRESSURING FOR HUMAN RIGHTS TRIALS AND PROSECUTIONS.) [REDACTED]

COMMENT: ALTHOUGH THE CASE SURROUNDING THE ASSASSINATION OF FORMER CHILEAN FOREIGN MINISTER ORLANDO ((LETELIER)) DEL SOLAR IS SPECIFICALLY EXCLUDED FROM COVERAGE UNDER THE 1978 AMNESTY LAW, IT APPEARS CONTRERAS MAY BE WORRIED ABOUT OTHER VIOLATIONS COMMITTED BY HIM PERSONALLY OR BY DINA WHEN HE HEADED THAT ORGANIZATION.)

8. [REDACTED] COMMENT: THE THEORY THAT INTERNATIONAL TREATIES FORBID AMNESTIES FOR HUMAN RIGHTS ABUSERS HAS BEEN PUT FORWARD BY ANDRES DOMINGUEZ, EXECUTIVE DIRECTOR OF THE CHILEAN HUMAN RIGHTS COMMISSION, BUT IS NOT SUPPORTED BY ALL OTHER HUMAN RIGHTS ACTIVISTS, INCLUDING SOME IN THE VICARIATE OF SOLIDARITY. THE KEY TO DOMINGUEZ' THEORY APPEARS TO LIE IN LABELING HUMAN RIGHTS ABUSES AS "CRIMES AGAINST HUMANITY," A TERM USED SPARINGLY; GENOCIDE AND SLAVERY, FOR EXAMPLE, ARE GENERALLY RECOGNIZED INTERNATIONALLY AS "CRIMES AGAINST HUMANITY."

WE EXPECT THE PSCH AND SOME MEMBERS OF THE HUMAN RIGHTS COMMUNITY TO CONTINUE EFFORTS TO OVERTURN OR DEROGATE THE AMNESTY LAW, BUT ARGUE WITH SOURCE THAT THE GOVERNMENT, REFLECTING PDC POLICY, WILL NOT SUPPORT THE TACTIC. THE PSCH'S BELIEF THAT THE AMNESTY LAW CAN BE OVERRIDDEN IN ONLY A FEW CASES, I.E., TO TRY CONTRERAS AND STARK, APPEARS TO BE WISHFUL THINKING; IT EITHER APPLIES TO ALL OR TO NONE. AND, WHILE IT IS CONCEIVABLE THAT THE ARMED FORCES WOULD AT SOME POINT IN THE FUTURE CONSIDER SACRIFICING CONTRERAS OR STARK TO PROTECT THEIR INSTITUTIONS AS A WHOLE, THEY ARE LIKELY TO VIGOROUSLY OPPOSE TAMPERING WITH THE AMNESTY LAW.)

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